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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres. In 2004, Gibraltar is celebrating the anniversary of 300 years under British rule.

2. The latest census of Gibraltar, taken on 12 November 2001, assessed the Territory's civilian population at 27,495, of which 22,882 were Gibraltarians, 2,627 other British subjects, 961 Moroccans and 1,025 of other nationalities.

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, Sir Francis Richard, replaced outgoing Governor David Durie in May 2003. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[2]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which assists the Governor in an advisory capacity. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister, and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a Court of Appeals and a Supreme Court. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[3] presented to Parliament in March

1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister said that the object of the exercise had been to achieve a constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect that. (See A/AC.109/2002/11, para. 6, for details of the proposed constitution, as reported by the local media.) In his January 2003 New Year message,[4] the Chief Minister stated that the Constitutional reform proposals had not been put formally to London in 2002 "because they would have been sucked into the Anglo-Spanish joint sovereignty negotiations". He said that it would be appropriate to start formal discussion of Constitutional modernization with the British Government in 2003.

7. The Chief Minister of Gibraltar submitted the proposals formally to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003 and suggested that the two meet informally to discuss the proposals and the way forward.[5] The Secretary of State has acknowledged the importance of those proposals to Gibraltar and said that they would receive the most careful consideration. He indicated that he would meet the Chief Minister soon for an initial discussion, adding that the Government would study the proposals put forward by the Government of Gibraltar, and was looking forward to discussing them in due course with a view to the further development of a modern and appropriate relationship with Gibraltar.[6] In his January 2004 New Year message, the Chief Minister said that it was important that Gibraltarians pursued Constitutional modernization proposals so that they did not contribute themselves to the fulfilment of the impression that Gibraltar's status could not be changed unless it was pursuant to a deal that transferred all or part of Gibraltar's sovereignty to Spain. Although he could not say with what kind of success the proposals would meet, it was important for Gibraltarians to continue pursuing political routes based on development of and respect for their political rights as a people.[7]

B. General elections

8. The last general elections in Gibraltar were held on 27 November 2003. The incumbent Gibraltar Social Democratic Party (GSD) obtained 51 per cent of the vote, followed by the Gibraltar Socialist Labour Party which, in alliance with the Liberal Party, obtained 40 per cent of the vote. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar. Joseph Bossano continues as Leader of the Opposition.

C. Recent developments

9. The British Overseas Territories Bill, which confers British citizenship on British Overseas Territories citizens, completed its parliamentary process in 2001-2002. It received Royal Assent on 26 February 2002 and became the British Overseas Territories Act 2002 (see A/AC.109/2002/2/Add.1). Under the British Nationality Act of 1981, British Overseas Territories citizens from Gibraltar are, upon application, entitled to be registered as British citizens. Accordingly, many

Gibraltarians already possess British citizenship and thus have the right of abode in the United Kingdom.[8] In July 2001, the Chief Minister of Gibraltar stated that for those Gibraltarians who already had or might in future want British citizenship, as opposed to British Overseas Territories citizenship, the new Bill represented a great improvement, as it gave "first class" British citizenship, without the need to apply to register, and in such a way as to be automatically passed on to children and future generations.[9]

10. Although Gibraltar's military installations and personnel have been scaled down considerably in the past 15 years, the Strategic Defence Review launched by the United Kingdom Government in May 1997 placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in November 2002 by the Foreign Affairs Committee of the House of Commons, the Territory's strategic importance remains undiminished in the twenty-first century. Some 440 British military personnel are based in Gibraltar.[10]

11. While in 2002 the most significant political development for the Territory was the continuation of the United Kingdom-Spanish negotiations on the subject of Gibraltar, relaunched in July 2001 in the framework of the Brussels process, and the Territory's response to those negotiations, those talks did not continue during 2003 (see paras. 50-52 below). The positions of the administering Power, the territorial Government and the Government of Spain regarding political developments in 2003 are reflected in section VI of the present report.

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. In the past the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling. According to the administering Power, the gross domestic product (GDP) of Gibraltar in 1999/2000 was £433.6 million, and per capita GDP was £15,863. Inflation in October 2003 was running at an annual rate of 3 per cent. According to the Chief Minister's 2004 New Year message, Gibraltar's economy, despite the external challenges that it faced, remained strong and prosperous and continued to grow at healthy rates.

B. Public finance

13. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2003 totalled £166.3 million and departmental expenditure amounted to £133 million. The main sources of Consolidated Fund revenues were income tax, which totalled £65.5 million; import duties, which totalled £29.2 million; and general rates, which totalled £11.7 million.

The main Consolidated Fund areas of expenditure for the period April 2002 to March 2003 were as follows: education and culture, £19.4 million; electricity, £12.5 million; social security and social services, £13.3 million; technical services, £12.3 million; health, £11.9 million; police, £8 million; tourism and transport, £7.2 million; housing, building and works, £7.5 million; secretariat, £9.2 million; environment, £5.6 million; treasury, £4.7 million; customs, £3.8 million; fire service, £2.6 million; trade, industry and communications, £2.4 million; and employment and consumer affairs, £2 million.

14. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £4,000 of taxable income to 45 per cent after the first £15,000 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions). During his 2004 New Year address, the Chief Minister stated that the Government would seek to consolidate public finances and increase Government revenue for the coming year, to ensure that it continued to operate a prudent policy of healthy budget surpluses that would not expose Gibraltar to any sudden or unexpected downturn that might occur in the Territory's economy in the future.

C. Trade

15. Figures for 2002 show that total imports amounted to £609.7 million (up from £590.7 million in 2001) and total exports to £428.7 million (up from £362 million in 2001). Nearly 37 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold bullion and gold coins, petrol, caravans, vessels, endangered species, fireworks and cigarettes, all goods can be imported under the Open General Licence.

D. Banking and finance

16. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory. At the end of 2003, there were 18 banks authorized to conduct banking business in Gibraltar. As at 31 December 2003, there were also some 8,464 fully paid companies (down from 8,620 in December 2002) registered under the Companies (Taxation and Concession) Ordinance. These companies pay a fixed annual tax, irrespective of profits made and whether or not their profits are received in the Territory.

17. In recent years, the Government of Spain has expressed concern that European Union (EU) directives on financial regulation have not been fully implemented in Gibraltar, while the United Kingdom has provided different data (see A/AC.109/2001/10, para. 20). In July 2001, the European Commission launched an inquiry into Gibraltar's exempt and qualifying company legislation under European Union State Aid rules. Gibraltar initiated court proceedings against that decision,

and the European Court of First Instance annulled the Commission's decision to investigate on procedural grounds. In April 2002, a government spokesperson stated that the authorities had devised a reform of the company taxation law that would maintain government revenue but also allow the Finance Centre to prosper in the face of the threats and challenges posed by the Organisation for Economic Cooperation and Development (OECD), the European Community State Aid litigation and the European Union Code of Conduct relating to business taxation.[11] On 16 October 2002, the European Commission opened a formal investigation procedure into whether Gibraltar's proposed tax reforms were in compliance with State Aid regulations. In addition, on 27 November 2002, the Commission recommended that the United Kingdom take measures for the abolition or reform of the exempt-company regime in Gibraltar, specifically, that the United Kingdom close the exempt-company regime to new entrants, that it definitively abolish the tax exemption by the end of 2005 at the latest and that it make a public statement on the steps it would take to repeal or reform the regime by the end of January 2003.[12] In March 2003 the tax reform got approved by the European Union's Council of Finance Ministers, which confirmed that the tax reform did not constitute harmful tax measures. However, the European Commission was still supposed to make a ruling on the tax reforms according to State Aid criteria. The Government of Gibraltar intended to introduce the tax reforms on 1 July 2003.[13] In early 2004, the Government of Gibraltar announced its intention to mount a legal challenge to a feared rejection of the proposed tax reforms. The Government said that it had received "informal indications from Brussels sources that the European Commission may conclude that the tax reforms proposal breach state aid regulations ..."[14]

18. A report issued in June 2000 by OECD included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.[15] On 28 February 2002 the Gibraltar Government agreed in writing to implement the principles required by OECD. On 14 March 2002 OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by 31 December 2005, and would thus be removed from the list of uncooperative tax havens.[16] The detailed list of commitments made by Gibraltar in order to comply with OECD requirements was published in both the Gibraltarian and the Spanish media.[17]

E. Transportation, communications and utilities

19. According to the administering Power, arrivals in Gibraltar are by air, primarily from the United Kingdom; by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships; and by land, comprising mainly day visitors arriving from Spain. Passenger arrivals for 2003 were as follows: air arrivals, 133,005; ferry arrivals, 27,655; cruise visitors, 143,508; and visitor arrivals by land, 7,502,815.

20. Regarding road transportation in and out of Gibraltar, in recent years the border issue has continued to be raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22, and A/AC.109/2002/11, para. 20). On 18 March 2002, the European Commission announced that it was closing its investigation into restrictions at the Gibraltar-Spain border, "having found no evidence to legally support claims that the checks carried out by the Spanish authorities ... are disproportionate and therefore incompatible with

Community law". However, the House of Commons Foreign Affairs Committee observed that "the delays continue, and it remains the case that the land border between Spain and Gibraltar is more heavily controlled than any other land border within the EU". The Government of the United Kingdom was asked to state how it proposed to ensure that delays at the border between Gibraltar and Spain would be no greater than at the land borders between Schengen and non-Schengen European Union States.[18] The Secretary of State responded that the average of all delays recorded daily in 2003 had been around 30 minutes for vehicles entering Gibraltar and 20 minutes for those leaving, reflecting a considerable improvement since the second channel into Spain was opened in March 2002. He reminded the Committee that the European Commission investigation on that matter had concluded that there had been no infringement of Community law. He promised that the Government would continue to monitor the situation closely and would raise any significant deterioration in the figures for border delays with the Spanish Government.[19]

21. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".[20] On 5 September 2001, the European Parliament approved a motion that almost unanimously called for, inter alia, the European Union Council of Ministers to resolve the dispute over the Gibraltar airport. As a result, the British Government agreed to suspend the application to Gibraltar of the Single European Sky package of measures. In March 2002, the Gibraltar Government rejected as "illegal and politically unacceptable" further reported arrangements between Spain and the United Kingdom whereby both States would discuss which European Union aviation measures should be applied to the Territory and which should not.[21] On 11 December 2003, the Joint Conciliation Committee of the European Parliament and the Council approved the joint text of the framework regulation for the creation of the Single European Sky. Paragraph 5 of article 1 of that instrument suspends application of the regulation and certain measures for the airport of Gibraltar until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 come into operation. The Governments of Spain and the United Kingdom are expected to inform the Council of the date of entry into operation.[22]

22. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships.

23. The national telephone service is operated by Gibtelecom Ltd., a joint venture company between the Government of Gibraltar and Verizon Communications, Inc., from the United States of America. Gibtelecom offers local and international voice and data services, leased lines, customer premises equipment, payphones and installations. Its wholly owned subsidiary company, Gibtel, provides Global System for Mobile Communications (GSM), Terrestrial Trunked Radio (TETRA) and Telex. Gibtelecom also offers Internet facilities via its other subsidiary, Gibconnect Ltd. At the end of 2003, 15,656 people had mobile telephones, up from 12,167 at the end of 2002.

24. With regard to an international dialling code for Gibraltar, the issue has not as yet been resolved as Spain continues not to recognize +350 as Gibraltar's international dialling code. (For previous developments on this matter, see

A/AC.109/2003/3, para. 23.) The Foreign Affairs Committee of the United Kingdom House of Commons recalled its previous suggestion that the United Kingdom dialling code be used and asked the Government to give its response on this suggestion. The Secretary of State responded that the Government's ultimate objective was Spanish recognition of Gibraltar's +350 international dialling code and that use of the British dialling code for calls from Spain to Gibraltar could be an interim way forward. He pointed out that Britain needed cooperation from the Spanish authorities. He stated that the Government would continue to investigate this and other options with the authorities in Gibraltar.[23]

F. Tourism

25. The total number of visitors arriving in Gibraltar in 2002 was 7.6 million. There were 53,417 hotel arrivals in 2002.

IV. Social conditions

A. Labour

26. According to the latest employment survey, the number of employees in Gibraltar was approximately 14,266. At the end of 2003, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 2,374; public administration and defence, 2,711; retail trade, 1,880; building and construction, 1,806; and medical and health services, 1,108. The total number of unemployed persons at the end of 2003 was estimated at 550. The standard weekly rate of unemployment benefit is £50.25, with an increase of £24.70 a week for any one dependent adult. A total of 545 claims were received during 2003, of which 539 were allowed. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives.

B. Human rights

27. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law. Several major international human rights instruments have been extended to the Territory by the administering Power (see A/AC.109/2001/10, para. 33).

28. The issues concerning the right of the inhabitants of Gibraltar to vote in European parliamentary elections were discussed previously (see A/AC.109/2003/3, para. 27). Following the introduction of a domestic bill on 21 November 2002 by the British Government, the European Parliament Representation Act, to provide for the Territory's enfranchisement in time for the next elections in 2004,[24] the Spanish Government presented a statement to the European Commission on 28 July 2003 setting out an action to be brought against the United Kingdom. The Spanish Government alleged that the United Kingdom had failed to fulfil its obligations under article 227 of the Treaty establishing the European Community. Spain objects

to the manner in which the United Kingdom has enfranchised the Gibraltar electorate in two respects: (a) that the 2003 Act extends the right to vote in European Parliament elections to "persons who are not nationals for the purposes of EC law", i.e., Commonwealth citizens resident in Gibraltar; and (b) that the creation of a combined electoral region, incorporating Gibraltar, infringes the 1976 EC Act and undertakings given by the United Kingdom in a minutes statement to the Council of Ministers on 18 February 2002. The British Government has rejected both arguments and has presented its defence to the European Commission. The British decision will combine the inhabitants of Gibraltar with those of south-west England for voting in the European elections. After a hearing held on 1 October 2003, a press report indicated that the European Commission supported the United Kingdom. However, the Commission gave its view in a political declaration rather than a legal opinion.[25] It was announced in the press that Spain intended to challenge the British law at the European Court of Justice.[26]

C. Social security and welfare

29. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

D. Public health

30. The Gibraltar Health Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities, see A/AC.109/2001/10, paras. 42 and 43). The expenditure of the Gibraltar Health Authority for the period from 1 April 2002 to 31 March 2003 was £37.5 million. In his 2004 New Year message, the Chief Minister called the new hospital that is to open in May 2004 "truly magnificent" and stressed the Government's unshakeable determination to modernize Gibraltar's health service and eliminate the remaining defects in the ways health care is delivered in the Territory.

E. Public education

31. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2003 was £19.02 million. A programme of major improvements to Government schools at a cost of £1.71 million was completed in 2003. As at the end of 2003, there were 13 primary schools (11 of them Government-run, one private and one services school) with a total of 3,842 students enrolled. There were also four single-sex secondary schools: two Government-run schools, with a total of 1,924 students, and two private schools. There is also a technical and vocational college with 214 students enrolled. The number of teachers employed in Gibraltar during the 2002/03 academic year is 381. All tertiary education is sponsored, and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. Currently, 605 Gibraltarians are reportedly pursuing university studies in the United Kingdom.

F. Crime and crime prevention

32. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to data provided by the administering Power, from January to December 2003 1,378 persons were arrested for minor offences (such as those related to liquor, disorderly conduct and immigration violations). During the same period 921 persons were arrested for serious crimes (such as those related to violence against the person, sexual offences, burglary and drugs).

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

33. Representatives of Spain and the United Kingdom attended the Caribbean regional seminar on Advancing the Decolonization Process in the Caribbean and Bermuda, held at The Valley, Anguilla, from 20 to 22 May 2003.

34. At its 4th meeting, on 4 June 2003,[27] the Special Committee considered the question of Gibraltar and had before it a working paper concerning the Territory (A/AC.109/2003/3). The Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. At the same meeting, the Deputy Chief Minister of Gibraltar, Keith Azopardi, made a statement on behalf of the Chief Minister of Gibraltar and replied to questions posed to him by the representatives of Papua New Guinea, the United Republic of Tanzania, and Bolivia as well as the Chairman (see A/AC.109/2003/SR.4). At the same meeting, a statement was made by Joseph Bossano, Leader of the Opposition in Gibraltar. Statements were also made by the representatives of Cuba and Papua New Guinea. At the same meeting, the Committee heard a statement by the representative of Spain.

B. Special Political and Decolonization Committee (Fourth Committee)

35. At its 4th meeting, on 8 October 2003 (see A/C.4/58/SR.4), the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 42-48 below), and a statement by petitioner Joseph Bossano, Leader of the Opposition in Gibraltar. At the same meeting, the Committee heard a statement by the representative of Spain (see paras. 49 and 50 below) and a statement by the representative of the United Kingdom, who spoke in exercise of the right of reply (see para. 39 below). At the same meeting, the Committee adopted a draft decision on the question of Gibraltar (A/C.4/58/L.3) without a vote.

C. Action by the General Assembly

36. At its 72nd plenary meeting, on 9 December 2003 (see A/58/PV.72), the General Assembly, on the recommendation of the Fourth Committee, adopted decision 58/526 without a vote. The decision reads as follows:

> "The General Assembly, recalling its decision 57/526 of 11 December 2002, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, inter alia, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each country, the most recent of which were held in Barcelona on 20 November 2001 and in London on 4 February 2002, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. Future status of the Territory

A. Position of the administering Power

37. On 15 July 2003, the Foreign Affairs Committee of the British House of Commons submitted its Eleventh Report on Gibraltar,[28] in which it recommended that: "the Foreign and Commonwealth Office withdraw its joint sovereignty proposal and then get on with establishing normal and cooperative relations between Gibraltar and Spain." In September 2003, the Secretary of State for Foreign and Commonwealth Affairs gave the following response to the recommendations made by the Foreign Affairs Committee:

> "The Government fully agrees that normal and cooperative relations between Spain and Gibraltar are highly desirable, and will continue to press the Spanish Government to this end. As to joint sovereignty, the Government's position remains as set out in the Foreign Secretary's statement of 12 July 2002."[29]

38. In his statement at the 2nd meeting of the Fourth Committee, on 6 October 2003 (see A/C.4/58/SR.2), the representative of the United Kingdom said that his Government welcomed the opportunity, as an administering Power, to bring the Committee's attention to a number of significant developments that had taken place during the year. Following the adoption in 2002 of the British Overseas Territories Act, which granted all citizens of those Territories full British citizenship, the right of abode in the United Kingdom and freedom of movement within the European

Union, over 14,000 passports had been issued by August 2003. As for environmental management in the Overseas Territories, his Government was working closely with the Territories in order to fulfil the commitments it had entered into under multilateral agreements, and to support the efforts of the Territories themselves to protect and improve their environment. With respect to the constitutional reviews, discussions were under way in the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat and the Turks and Caicos Islands. Talks with St. Helena had also started and were the furthest advanced, whereas discussions with Gibraltar have yet to commence.

39. Exercising his right of reply at the 4th meeting of the Fourth Committee, on 8 October 2003 (see A/C.4/58/SR.4), to a statement made previously by the representative of Spain concerning Gibraltar, the representative of the United Kingdom said that the United Kingdom would continue to respect its commitment to the people of Gibraltar, as set forth in the preamble to the Constitution of Gibraltar of 1969, which enshrined the principle of consent of the people of Gibraltar to any change to sovereignty. The United Kingdom Government believed that questions concerning Gibraltar could be resolved only through dialogue. Its goal remained that of building a better future for the people of Gibraltar.

40. In his closing remarks during the Overseas Territories Consultative Council meeting held in London from 8 to 10 December 2003, referring to the role of Governors and constitutional reform, the Parliamentary Under Secretary of State said that it was based on the principle of partnership. According to the Under Secretary, the concept of free association advanced by the United Nations Special Committee of 24 would not be inconsistent with that if it meant mutual acceptance by both sides, because the United Kingdom Government had responsibilities to protect. But if it meant, as he sensed some territorial Governments were arguing, that some Territories would draw up their own constitutions free of outside interference, the United Kingdom would not agree with that. The Under Secretary went on to add that his Government valued its relationship with the Territories. It would not wish to force them into independence, although it would respond positively, where that would be an option (i.e., not Gibraltar) if that was the clear and constitutionally expressed wish of the people. The United Kingdom respected the fact that for some Territories that might be the long-term objective. He stressed, however, that while the Territories retained a link with the United Kingdom, their governance should be in partnership with it.[30]

B. Position of the territorial Government

41. During 2003, the Chief Minister of Gibraltar, Mr. Peter Caruana, made numerous statements on the status of Gibraltar and the Territory's position with respect to the talks between Spain and the United Kingdom. Welcoming the new Governor upon assumption of his duties on 27 May 2003, the Chief Minister pointed out that full respect for the political and democratic rights of the people of Gibraltar to decide as a people their own future required Her Majesty's Government to desist from entering, against the wishes of the people of Gibraltar, into political agreements or a declaration of principle with Spain regarding Gibraltar, regardless of whether they could or could not be implemented into practice without the peoples' consent. The people of Gibraltar recognized no distinction between the principles and practice of their rights. He continued to say that the people of

Gibraltar wished sovereignty over the whole of Gibraltar to remain exclusively British and it was time that Her Majesty's Government policy should reflect that reality. According to the Chief Minister, the commitment by the people of Gibraltar to their political rights and aspirations as a people was reflected, among other things, in the importance that they attached to the very full measure of self-government that they enjoyed in accordance with the Constitution and its evolution through long-established practice, which they regarded as a vital part of their democracy. The people of Gibraltar valued their British sovereignty and wished to retain it, as well as their constitutional links with Britain. But they also wished to see an end to an antiquated colonial status. The two objectives were perfectly compatible. The people of Gibraltar intended to promote the attainment of these dual, parallel objectives through a process of constitutional modernization which, by modernizing the constitutional relationship, would be recognized internationally as putting an end to their colonial status while retaining British sovereignty, close constitutional links with Britain and that degree of control over their own affairs that was essential to their future survival.[31]

42. At the 4th meeting of the Fourth Committee, on 8 October 2003 (see A/C.4/58/SR.4), the Chief Minister of Gibraltar, Mr. Caruana, said that every year the General Assembly adopted a consensus resolution on the question of Gibraltar, of which he quoted the main provisions. Each year since 1992, his Government had underscored that those resolutions basically reflected the "consensus" agreed between the United Kingdom and Spain, but did not recognize the colonial status of the people of Gibraltar or their inalienable right to self-determination. The resolutions appeared to treat the question of Gibraltar as if it were a dispute over territorial sovereignty between the United Kingdom and Spain rather than an issue of decolonization, despite the inclusion of Gibraltar in the list of Non-Self-Governing Territories. It was important to emphasize the difference between a dispute over sovereignty and a question of decolonization, which involved very different international legal and political principles.

43. He called for an end to bilateralism between the United Kingdom and Spain in determining Gibraltar's future, which could only be decided by its people. For Gibraltar, the issue was one of decolonization and the applicable principle was self-determination. For Spain, the issue was one of territorial sovereignty, which would allow it to apply the principle of territorial integrity to the decolonization process. For the United Kingdom, the applicable principle was self-determination but, inexplicably, it was engaged in bilateral negotiations with Spain over the territorial sovereignty of Gibraltar that were wholly incompatible with the principle of self-determination.

44. He welcomed the fact that no reference had been made to Gibraltar in the statement made by the representative of Spain to the General Assembly at its current session. The previous year, however, the Minister for Foreign Affairs of Spain had spoken of applying the principle of territorial integrity to the settlement of the question of Gibraltar. Yet Gibraltar was a colony and, according to current United Nations doctrine on decolonization, there was no alternative to the principle of self-determination. Furthermore, General Assembly resolution 2625 (XXV) of 24 October 1970 made it clear that the principle of territorial integrity did not apply to decolonization situations if the Territory was a colony and was not currently a part of a Member State, which was the case with Gibraltar. The applicable principle in the case of Gibraltar was the freely expressed will of the peoples concerned.

45. Since there was no agreement between the three parties as to the principle applicable to the problem, he suggested that it might be possible to break the deadlock by appealing to the International Court of Justice to issue an advisory opinion on the matter. However, Spain rejected that solution, which Mr. Caruana stated would prevent it from systematically distorting the applicable principles of international law for political purposes. It was in that same spirit, and in order to maintain its position, that Spain opposed the sending of a visiting mission. The Parliament of Gibraltar, on the other hand, had unanimously adopted a resolution asking the Special Committee to visit Gibraltar.

46. Furthermore, in July 2003 the Council of Representative Bodies of Gibraltar had launched a petition that also asked the Special Committee to send a visiting mission to Gibraltar so that it could see for itself the economic, social, political and cultural realities of the Territory and the unique and separate identity of its people; assess the capacity of the people of Gibraltar to exercise their right to self-determination; and determine their wishes and aspirations with regard to the political future of their homeland. The petition had been signed by almost 80 per cent of Gibraltar's electorate. The sending of a visiting mission to a Non-Self-Governing Territory was a matter for the Special Committee, the Territory and the administering Power. Since the United Kingdom Government had stated that it would raise no objection to such a visit, he urged the Fourth Committee to ask the Special Committee to visit Gibraltar.

47. With respect to the principle of the sharing of sovereignty over Gibraltar by the United Kingdom and Spain, he wished to reaffirm that it was utterly unacceptable to the people of Gibraltar, who saw it as a way to perpetuate the colonization of their Territory and, what was more, by two Powers instead of one. Despite strong opposition from the Governments of Spain and the United Kingdom, a referendum had been held on 7 November 2002 on the question of whether the population of Gibraltar approved of the principle of the sharing of sovereignty over Gibraltar by the United Kingdom and Spain. Some 90 per cent of those voters had said "no". Continued negotiations between the United Kingdom and Spain concerning any transfer of sovereignty would therefore be devoid of any political or democratic legitimacy. The people of Gibraltar were resolutely opposed to the principle of joint sovereignty. Sovereignty over their country was indivisible and could not be shared by the administering Power and a neighbouring State to suit the military interests of one and the territorial ambitions of the other, while ignoring the inalienable right of the people to self-determination.

48. He therefore repeated his request that the Committee should modify the consensus resolution that it adopted every year, in order to reflect the colonial situation and the primacy of the wishes of the people of Gibraltar, that it should refer the case to the International Court of Justice, and that it should authorize the Special Committee to visit Gibraltar.

C. Position of the Government of Spain

49. Speaking at the 4th meeting of the Fourth Committee, on 8 October 2003 (see A/C.4/58/SR.4), the representative of Spain said that in accordance with decision 57/526 adopted by the General Assembly at its fifty-seventh session with regard to

the question of Gibraltar, the Spanish and British Governments had initiated contacts at various levels over the past year.

50. The representative of Spain added that, in June 2003, the Deputy Chief Minister of Gibraltar had expressly invited the Special Committee to send a visiting mission to Gibraltar, and a petition of support for such a mission had received many signatures in Gibraltar. The Government of Gibraltar was thereby attempting to garner implicit or explicit support for its opposition to the principle of territorial integrity traditionally recognized by the Organization and international law. It was also attempting to obtain recognition for the referendum held in Gibraltar on 7 November 2002 which, as was well known, was neither valid nor legally binding and had not been recognized by the administering Power, the United Kingdom. He pointed out that, in cases involving disputes relating to sovereignty, as was the case in Gibraltar, the sending of a visiting mission of the Special Committee must be approved not only by the administering Power but also by the other Party to the dispute. In that connection, he stressed that Spain was opposed to a visiting mission to Gibraltar. In conclusion, he reiterated his Government's desire to continue constructive negotiations between Spain and the United Kingdom on the issue of Gibraltar with a view to achieving, as soon as possible, a satisfactory comprehensive agreement which would respect the legitimate interests of the inhabitants of the Non-Self-Governing Territory and also hold out the promise of a better future.

D. United Kingdom-Spanish negotiations

51. As mentioned above, during 2003, there was no continuation of the joint talks between Spain and the United Kingdom on the subject of Gibraltar. (For previous developments on this subject during 2002, see A/AC.109/2003/3, paras. 52-54.) According to media reports, in mid-May Spanish Prime Minister José María Aznar wrote to the British Prime Minister, Tony Blair, suggesting that the two sides take up again the talks on the subject of Gibraltar.[32] During his trip to Madrid in June 2003, the British Minister for Europe, Denis MacShane, in an interview to the Spanish press on 8 June 2003, after meeting with his Spanish counterpart, said: "the chances of achieving an agreement for the future of Gibraltar which is not accepted by the Gibraltarians are simply zero".[33] The statement by Dr. MacShane was later supported by Prime Minister Tony Blair, who, during a question-and-answer session in the British Parliament, confirmed that there could be no question of any deal on the future of the Territory going through without the consent of the people of Gibraltar.[34] When British Foreign Secretary Jack Straw was asked about this issue in the British Parliament, he reiterated that British policy was as stated by him to the Commons in July 2002.[35]

52. Following Dr. MacShane's statement, the Minister for Foreign Affairs of Spain, Ana Palacio, was quoted in the Spanish press as follows: "The negotiations over Gibraltar are in the same situation where they were a month ago. There has been an official announcement by the British Government which says that we continue collaborating. There has been no spectacular progress, because we are at a very advanced phase of the negotiations where details are being discussed and nothing is closed. However, I insist that we have complete confidence in the engagement by the United Kingdom".[36]

53. Responding to the recommendation of the Foreign Affairs Committee of the British House of Commons that the British Government invite the Government of Gibraltar to participate in any further talks on the future of Gibraltar, whether or not under the Brussels process, under the formula offered in 1997, the Secretary of State for Foreign and Commonwealth Affairs responded as follows:

> "We note the Committee's view. However, no date has been set for future Brussels process talks, and it would be premature to seek to set the terms now for participation in future meetings, whether under the process or not."[37]

E. United Kingdom-Gibraltarian discussions

54. In September 2003, the Secretary of State for Foreign and Commonwealth Affairs responded as follows with regard to the Government's overall policy towards Gibraltar:

> "The Government's overall policy towards Gibraltar remains as set out in its response to the Committee's last report: 'The Government's policy ... is based on two fundamental principles. The first is the principle of Gibraltarian consent. The Government has repeatedly made clear that it stands by the 1969 commitment given by the then Labour Government that there will be no change in Gibraltar's sovereignty against the freely and democratically expressed wishes of its people. The second is the principle that a lasting resolution of Gibraltar's problems can only be achieved through dialogue and negotiation with Spain.'"[38]

55. Regarding Gibraltar's position, after the issuance of the report by the Foreign Affairs Committee of the House of Commons, the Chief Minister said the following: "This is yet another excellent and favourable report by the Foreign Affairs Committee. I hope that the British Government will now accept its very sensible conclusions and act accordingly. There is no point in the pursuit of an agreement based on the principle of joint or shared sovereignty, and I hope that that will now be properly laid to rest."[39]

56. In his speech during Gibraltar's National Day, referring to the stalled talks between Britain and Spain, the Chief Minister warned London and Madrid that if they restarted the joint sovereignty negotiations, Gibraltar would restart its political campaign to oppose them every inch of the way. He added that no Government of Gibraltar had ever been willing, and no Government of Gibraltar would ever be willing, to negotiate the transfer of any part of Gibraltar's sovereignty to Spain.[40]

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 12 January 2004, as well as from official documents of the Government of Spain and published sources.

[2] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7-23.

[3] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

[4] Government of Gibraltar press release, "Chief Minister's New Year message", 1 January 2003.

[5] Government of Gibraltar press release, 12 February 2004.

[6] Foreign and Commonwealth Office Written Ministerial Statement.

[7] Government of Gibraltar Press Release, Chief Minister's 2004 New Year Message.

[8] British Overseas Territories Bill, Explanatory Notes, House of Lords, 26 June 2000.

[9] Government of Gibraltar press release, 11 July 2002.

[10] United Kingdom Parliament, Foreign Affairs Committee, Eleventh Report on Gibraltar, 5 November 2002.

[11] *Gibraltar Chronicle*, 5 April 2001.

[12] European Commission press releases IP/02/1484 of 16 October 2002 and IP/02/1748 of 27 November 2002.

[13] Fidelity Corporate Service, www.fidelity.gi.

[14] www.eubusiness.com, Gibraltar vows to fight negative EU tax ruling, 23 February 2004.

[15] Organisation for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.

[16] Agence France-Presse, 14 March 2002.

[17] *Gibraltar Chronicle* and *El País*, 15 March 2002.

[18] House of Commons, Foreign Affairs Committee, Gibraltar, Eleventh Report, 15 July 2003.

[19] Response of the Foreign Secretary to the United Kingdom Parliament regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, September 2003.

[20] Reuters and *El País*, 8 March 2001.

[21] Government of Gibraltar press release, 22 March 2002, and *ABC*, 23 March 2002.

[22] European Union, Legislative Acts and Other Instruments, Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky.

[23] Response of the Foreign Secretary to the United Kingdom Parliament regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, September 2003.

[24] Government of Gibraltar Press Release, 8 May 2003.

[25] Reuters, 29 October 2003.

[26] Deutsche Presse-Agentur, 17 February 2004.

[27] See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 23* (A/58/23), chap. VIII, sect. A.

[28] House of Commons, Foreign Affairs Committee, Gibraltar, Eleventh Report.

[29] Response of the Foreign Secretary to the United Kingdom Parliament regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, September 2003.

[30] The Fifth Overseas Territories Consultative Council, *Report of the Proceedings*, 8-10 December 2003, annex F, Closing Remarks by Mr. Rammell.

[11] Welcome Address by the Hon. Peter Caruana, Chief Minister of Gibraltar on the Occasion of the Swearing-in of H.E. Sir Francis Richards KGMG, CVO as Governor and Commander-in-Chief of Gibraltar, 27 May 2003.

[12] *La Vanguardia*, 28 May 2003, *El Mundo*, 6 and 9 June 2003.

[13] Agence France-Presse, Reuters, Deutsche Presse-Agentur, *La Vanguardia*, 8-9 June 2003.

[14] Agence France-Presse, 11 June 2003, *The Gibraltar Chronicle*, 12 June 2003.

[15] *The Gibraltar Chronicle*, 22 June 2003.

[16] *El Pais*, 10 June 2003.

[17] Response of the Foreign Secretary to the United Kingdom Parliament regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, September 2003.

[18] Response of the Foreign Secretary to the United Kingdom Parliament regarding the Foreign Affairs Committee's Eleventh Report on Gibraltar, September 2003.

[19] Government of Gibraltar Press Release, 31 July 2003.

[20] Government of Gibraltar Press Release, 10 September 2003.